

EMERGENCY

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2008-1022-DIE
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Food and Agriculture			AGENCY FILE NUMBER (if any) PH0893

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Gypsy Moth Interior Quarantine		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 3		AMEND 3408	
3. TYPE OF FILING		REPEAL	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Stephen S. Brown		TELEPHONE NUMBER (916) 654-1017	FAX NUMBER (Optional) (916) 654-1018
		E-MAIL ADDRESS (Optional) sbrown@cdfa.ca.gov	

8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Robert L. Wynn, Statewide Coordinator, Pierce's Disease Control Program

Adopt Section 3408 in Article 4, Subchapter 4, Chapter 3, Division 4, Title 3, to read:

Section 3408. Gypsy Moth Interior Quarantine.

A quarantine is established against the following pest, its hosts, and possible carriers.

(a) Pest. Gypsy moth (*Lymantria dispar*) a lepidopterous insect of the family Lymantriidae which in the larval stage defoliates many species of trees and shrubs.

(b) Area Under Quarantine. In the Ojai area of Ventura County: Beginning at the intersection of Cooper Canyon Road and Meyers Road; then, easterly along Meyers Road to its intersection with N Rice Road; then, southeasterly along N Rice Road to its intersection with Fairview Road; then, easterly along Fairview Road to its intersection with State Highway 33; then, starting southeasterly along State Highway 33 to its intersection with E Villanova Road; then, starting southeasterly along E Villanova Road to its intersection with W Villanova Road; then, southwesterly along W Villanova Road to its intersection with State Highway 33; then, easterly along an imaginary line to its intersection with the eastern most point of Pegasus Street; then, westerly along Pegasus Street to its western most point; then, westerly along an imaginary line to its intersection with State Highway 150 and an unnamed creek at 34.426645 latitude and -119.296383 longitude; then, starting southwesterly along State Highway 150 to its intersection with Macdonald Drive; then, starting northerly along Macdonald Drive to its intersection with Shokat Drive; then, northerly along an imaginary line to its intersection with Willis Canyon Road at 34.449177 latitude and -119.310359 longitude; then, northeasterly along an imaginary line to the point of beginning.

(c) Articles and Commodities Covered. (Hosts and Carriers)

(1) Trees, shrubs with persistent woody stems, and parts of such trees and shrubs except seeds, fruits, and cones.

(2) Timber and building materials, including such items as lumber, planks, poles, logs, firewood, fencing and building blocks.

(3) Mobile homes, recreational vehicles, trailers, boats, and associated equipment.

(4) Outdoor household articles including furniture, garden tools and garden machinery.

(5) Any other items or means of conveyance not covered above when it is determined by a State plant quarantine officer that the item presents a hazard of spread of the gypsy moth and the person in possession thereof has been so notified.

(d) Restrictions. Items under quarantine are prohibited movement from the area under quarantine except under the following conditions:

(1) Any item under quarantine may be inspected and certified by a State plant quarantine officer if, in his opinion and judgment, it is free of all stages of gypsy moth. Any item that in the opinion and judgment of a State plant quarantine officer is too large or for other reasons cannot be adequately inspected for all stages of gypsy moth will not be certified except as indicated in paragraphs (3) and (4) below.

(2) Garden prunings from trees and shrubs may be moved to the city or county dumps where such material is to be buried, incinerated, composted, or otherwise treated or handled in a manner that is approved by the County Agricultural Commissioner. Certification is not necessary for such material picked up by city or county vehicles or trucking companies under contract to haul such material.

(3) Any item which cannot be adequately inspected as stated in (1) above may be moved from the quarantine area if cleaned or treated as prescribed by the Secretary and in a manner satisfactory to the County Agricultural Commissioner. Items cleaned or treated shall be certified by the County Agricultural Commissioner or a State plant quarantine officer for movement from the quarantine area.

(4) The County Agricultural Commissioner or State plant quarantine inspectors may also certify items for movement when in their judgment the item has not been exposed to infestation, or has not been exposed to infestation after properly being inspected, cleaned, or treated.

(e) Director May Issue Special Permits. The Director may issue special permits allowing movement of articles or commodities otherwise prohibited. The permit shall state any and all mandatory provisions or conditions under which movement will be allowed.

NOTE Authority cited: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.
Reference: Sections 5301, 5302 and 5322, Food and Agricultural Code.

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary has also determined that this emergency clearly poses such an immediate, serious harm that delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3). Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five calendar days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

Specific Facts Showing the Need for Immediate Action

On July 18, 2007, four adult male gypsy moths were taken from a trap in the Ojai area of Ventura County. The finding of four mature male gypsy moths was indicative of a possible incipient infestation of the moth in the Ojai area of Ventura County. As a result the Department implemented an emergency amendment to its Gypsy Moth Eradication Area regulation, Section 3591.6, which was effective on July 24, 2007.

The Department has continued to deploy delimitation traps and began a fall survey for gypsy moth egg masses in the vicinity of where adult moths were trapped. On October 9, 2008, multiple gypsy moth egg masses (Pest and Damage Record #s 1422481 and 1422482) were found on the trunk and branches of two oak trees. Additionally, spent pupal cases were also found indicating the source of where the adult gypsy moths had been emerging (refer to pictures). There is clear evidence that a reproducing population of gypsy moth exists in the Ojai area of Ventura County. As a result, it is now necessary to implement a quarantine to prevent the artificial movement of gypsy moth from this area.

The European gypsy moth female adult cannot fly and after it is mated, it crawls over items laying its egg masses. These egg masses may be moved on outdoor household items such as dog houses, barbeques, yard equipment, potted plants, etc. Additionally, the egg masses have been found attached to and moving on vehicles, trailers and boats which have sat for a period of time in storage in an outdoor area. Egg masses may also move on nursery stock.

While this regulation has been developed and proposed, the Department implemented its statutory authority contained in California Food and Agricultural Code (FAC) Section 5701 to prevent the artificial spread of this pest from this area while it still conducts its visual survey activities for egg masses. FAC Section 5701(a) states, "If any pest exists on any premises, the director or the commissioner may hold any plant or other host or possible carrier which is, or may be, capable of disseminating or carrying the pest. The director or the commissioner also may hold the plants, other hosts, or other possible carriers on any premises within five miles of the premises on which the pest was found to exist. The director or commissioner shall notify the owner of the plant or other host or possible carrier, or his or her agent, of this action, and the issuance of any shipping permit or nursery stock certificate with respect to the plant or other host or possible carrier shall be refused and any such permit or certificate which has been previously issued shall be revoked.

(b) The distance from the premises at which a pest is found that the director or commissioner may hold plants, other hosts, or other possible carriers shall be the maximum distance that the director or commissioner determines the pest is likely to travel, but not to exceed five miles."

The Department now believes it has enough survey data to establish the quarantine boundary which includes a one mile buffer area surrounding the epicenter of the infestation. The proposed quarantine boundary was developed in cooperation with the Agricultural Commissioner of Ventura County and the United States Department of Agriculture.

Gypsy moth, *Lymantria dispar*, is a serious pest of fruit, forest, and shade trees. In the eastern United States the pest has, by repeated defoliation, killed many trees. If left uncontrolled it can destroy native forest and wooded areas and, in orchard and urban areas, pesticide use may be necessary to eradicate the insect and prevent damage to crops and ornamental and native trees. A defoliated watershed increases both fire and erosion potential.

Gypsy moth is a pest of national concern. The United States Department of Agriculture also maintains a Federal Domestic Quarantine Notice against gypsy moth (Section 301.45, Title 7, Code of Federal Regulations) to prevent the artificial spread of this pest to uninfested areas.

The gypsy moth goes through four stages of development: egg, larva, pupa, and moth. It usually has one generation per year, overwintering in egg masses attached to trees, stones, walls, logs, and other outdoor objects such as outdoor furniture, automobiles, and trailers. The female moths lay their eggs in the summer, in egg masses which may contain up to 1,000 eggs. In California, the eggs usually hatch in February or March, but may hatch earlier. The larvae are the destructive stage and feed until pupating in early summer. The moths emerge from the pupal or cocoon stage in 10 to 14 days as adult moths. The pests do not feed in the moth stage, but only mate and lay eggs. Hosts of the gypsy moth include oak, apple, willow, cherry, and maple.

If the moth were allowed to spread and become established in urban, agricultural or native forests, California's forestry and nursery industries would suffer losses due to decreased production of marketable crops, host trees, and shrubs; increased pesticide use; and loss of markets if other states or countries enacted quarantines against California products. Severe damage to native plantings and forests would also occur.

The gypsy moth has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the

California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, sections 15307 and 15308.

This amendment will provide authority for the State to perform quarantine activities against gypsy moth in the Ojai area of Ventura County. Gypsy moth egg masses have been laid in this area and it is necessary to immediately prevent their artificial movement from the infested area. Therefore, it is necessary to amend Section 3591.6(a) on an emergency basis.

Authority and Reference Citations

Authority: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.

Reference: Sections 5301, 5302 and 5322, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322).

Section 3408. Gypsy Moth Interior Quarantine.

The proposed amendment of Section 3408) will establish an approximate five square mile regulated area surrounding the Ojai area of Ventura County. The effect of this amendment of the regulation is to establish authority for the State to perform quarantine activities against gypsy moth in this area.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3408 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Ventura County Agricultural Commissioner requested that these changes to the regulation be made.

Cost Estimate

The Department has also determined that the regulation will involve no additional costs or savings to any state agency because initial funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.